

In the Matter of the Compensation of
MARK S. MOONEY, Claimant

WCB Case No. 21-02029

ORDER ON REVIEW

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Reviewing Panel: Members Curey and Ousey.

Claimant requests review of that portion of Administrative Law Judge (ALJ) Sencer's order that upheld the self-insured employer's "ceases" denial of his combined cervical spine condition. On review, the issue is compensability.

We adopt and affirm the ALJ's order with the following supplementation.

Relying on the opinions of Drs. Degen and Rosenbaum, the ALJ concluded that the employer had met its burden to prove that the previously accepted C7 radiculopathy condition ceased to be the major contributing cause of claimant's disability or need for treatment for his combined cervical spine condition.

On review, claimant asserts that the record does not establish that the "otherwise compensable injury" (*i.e.*, the accepted C7 radiculopathy condition) ceased to be the major contributing cause of the disability or need for treatment of his combined cervical spine condition. For the following reasons, we disagree with claimant's contention.

ORS 656.262(6)(c) authorizes a carrier to deny an accepted combined condition if the "otherwise compensable injury" ceases to be the major contributing cause of the combined condition. The carrier bears the burden to establish a change in the claimant's condition or circumstances from the effective date of the combined condition acceptance such that the "otherwise compensable injury" is no longer the major contributing cause of the disability or need for treatment of the combined condition. ORS 656.266(2)(a); *Walmart Stores, Inc. v. Young*, 219 Or App 410, 419 (2008); *Oregon Drywall Sys. v. Bacon*, 208 Or App 205, 210 (2006); *State Farms Ins. Co. v. Lyda*, 150 Or App 554, 559 (1997) (changed circumstances is a prerequisite for denial of an accepted combined condition). Where the carrier has the burden of proof under ORS 656.266(2)(a), the evidence supporting its position must be persuasive. *Jason J. Skirving*, 58 Van Natta 323, 324 (2006), *aff'd without opinion*, 210 Or App 467 (2007).

In analyzing a “ceases” denial under ORS 656.262(6)(c), the contributions of the component parts of the combined conditions are evaluated; *i.e.*, the “otherwise compensable injury” and the statutory preexisting condition. *Vigor Indus., LLC v. Ayres*, 257 Or App 795, 803 (2013); *Christopher L. Rowles*, 66 Van Natta 1445, 1454 (2014). The “otherwise compensable injury” is the previously accepted condition, rather than the work-related injury incident. *Brown v. SAIF*, 361 Or 241, 282 (2017); *Barbara J. DeBoard*, 71 Van Natta 550, 553-55 (2019). Therefore, a carrier may deny the accepted combined condition if the medical condition that the carrier previously accepted ceases to be the major contributing cause of the combined condition. *Brown*, 361 Or At 282.

Resolution of the issue is a complex medical question that must be resolved by expert medical opinion. *Barnett v. SAIF*, 122 Or App 279 (1993); *Lindsay E. Dean*, 71 Van Natta 890, 891 (2019). We rely on medical opinions that are well reasoned and based on complete information. *See Somers v. SAIF*, 77 Or App 249, 263 (1986); *Linda E. Patton*, 60 Van Natta 579, 582 (2008).

Here, the combined cervical spine condition was accepted as of the date of injury, November 6, 2019. (Ex. 41). Thus, the “baseline” date for determining whether there was a change in the combined condition is November 6, 2019. *See Philip Sappington*, 75 Van Natta 321, 322 (2023) (date of “baseline” for determining whether there was a change in the combined condition was the date the combined condition was accepted); *Nayef Salem*, 74 Van Natta 187, 188 (2022) (when a combined condition is accepted as of the date of injury, that date is the “baseline” for determining whether there was a change in the claimant’s combined condition). Moreover, the denial of the combined condition stated that, as of November 25, 2020, the accepted C7 radiculopathy condition was no longer the major contributing cause of claimant’s disability or need for treatment for the combined condition of “disabling C7 radiculopathy combined with a preexisting C2 through C6 laminectomy and posterior fusion, Brown-Sequard Syndrome, and cervical spondylosis at C6-7.” (Exs. 41, 42). Accordingly, the employer must establish a change in claimant’s condition or circumstances between November 6, 2019, and November 25, 2020, such that the previously accepted condition (C7 radiculopathy) ceased to be the major contributing cause of the disability or need for treatment of his combined cervical spine condition. ORS 656.262(6)(c); ORS 656.266(2)(a); *Brown*, 261 Or at 282.

In this case, claimant contends that the employer cannot prove that his accepted C7 radiculopathy condition ceased to be the major contributing cause of the disability or need for treatment for his combined cervical spine condition

because he received a permanent impairment award related to his accepted condition. Yet, compensability and impairment are separate inquiries. *See* ORS 656.262(6)(c); ORS 656.266(2)(a); ORS 656.214(1)(a). Specifically, permanent impairment relates to the loss of use or function of a body part, whereas the employer's "ceases" denial pertains to the major contributing cause of the disability or need for treatment of the combined condition. *See* ORS 656.262(6)(c); ORS 656.266(2)(a); ORS 656.214(1)(a). Thus, we decline to find that the employer cannot issue a "ceases" denial simply because claimant received a permanent impairment award for the previously accepted condition. *Id.*

Furthermore, after evaluating the evidence, we find that the opinions of Drs. Degen and Rosenbaum persuasively establish that claimant's "otherwise compensable injury" (*i.e.*, the previously accepted C7 radiculopathy condition) ceased to be the major contributing cause of claimant's disability or need for treatment of the combined condition no later than November 25, 2020. We reason as follows.

Dr. Degen, who first examined claimant in 2019, opined that claimant's condition was medically stationary as of November 25, 2020. (Ex. 39-2). He reasoned that claimant's acute injury-related complaints were resolved and his presentation was consistent with his preexisting condition. (*Id.*) Dr. Degen based his opinion on claimant's November 16 and November 17, 2020, work capacity evaluation. (*Id.*) He clarified that all of claimant's residual sensory and strength deficits were due to his preexisting cervical spine condition and an unrelated prior right shoulder rotator cuff repair. (*Id.*) Finally, Dr. Degen concluded that claimant's accepted C7 radiculopathy condition ceased to be the major contributing cause of his combined cervical spine condition as of November 25, 2020. (*Id.*)

Likewise, Dr. Rosenbaum opined that claimant's accepted C7 radiculopathy condition ceased to be the major contributing cause of the combined cervical spine condition as of April 20, 2020 (the date he examined claimant), but no later than November 25, 2020, when Dr. Degen declared claimant to be medically stationary. (Ex. 46-2). Dr. Rosenbaum stated that he reviewed claimant's pre and post-injury records, including claimant's April 25, 2019, treatment with Dr. Abtin and his May 17, 2019, treatment with Drs. Grew and Degen. (Ex. 46-1). Additionally, Dr. Rosenbaum noted that claimant had reported that his right arm pain and right thumb and index finger numbness had resolved after the March 2020 cervical spine surgery. (*Id.*) Furthermore, Dr. Rosenbaum's physical examination on April 20, 2020, revealed no new physical impairment aside from some reduced range of motion after the surgery. (Ex. 46-3).

Thus, based on the opinions of Drs. Degen and Rosenbaum, which we find to be persuasive for the reasons stated in the ALJ's order, the record establishes the requisite "change" in claimant's combined condition such that his previously accepted C7 radiculopathy condition ceased to be the major contributing cause of the disability or need for treatment of his combined cervical spine condition by at least November 25, 2020. *See Debra A. Mangine*, 68 Van Natta 1438, 1442-43 (2016) (physician's opinion that described the surgery's impact on the claimant's combined condition persuasively established that the claimant's otherwise compensable injury was no longer the major contributing cause of the combined condition); *Kurtis L. Kohl*, 66 Van Natta 1796, 1802 (2014) (physician's opinion as a whole, read in context, persuasively established a change in the claimant's condition sufficient to meet the carrier's burden of proof under ORS 656.266(2)(a)).

Consequently, based on the aforementioned reasoning, as well as that contained in the ALJ's order, we conclude that the employer met its burden of proof under ORS 656.266(2)(a). Accordingly, we affirm the ALJ's order that upheld the employer's "ceases" denial of claimant's combined cervical spine condition.

ORDER

The ALJ's order dated February 1, 2023, is affirmed.

Entered at Salem, Oregon on October 27, 2023